

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel, )  
 4 W.A. DREW EDMONDSON, in his )  
 capacity as ATTORNEY GENERAL )  
 5 OF THE STATE OF OKLAHOMA, )  
 et al. )

6 Plaintiffs, )

7 V. )

No. 05-CV-329-GKF-SAJ

8 )  
 9 TYSON FOODS, INC., et al., )

10 Defendants. )

11  
 12  
 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 MARCH 3, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME V

17  
 18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

19  
 20 APPEARANCES:

21 For the Plaintiffs: Mr. Drew Edmondson  
 Attorney General  
 22 Mr. Robert Nance  
 Mr. Daniel Lennington  
 23 Ms. Kelly Hunter Burch  
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Glen R. Dorrough  
 UNITED STATES COURT REPORTER

EXHIBIT

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22	March 3, 2008	
23	THE COURT: Please be seated. Do I understand	
24	correctly that the plaintiffs are prepared to put on their	
25	witness out of time?	

1 Q. Now, where did that nutrient surplus come from?

2 A. You mean where did the definition come from?

3 Q. No, where did the surplus nutrients in those watersheds  
4 come from?

5 A. Well, it came from a number of sources, I suspect.

6 Q. Including, as you said in the CREP application, that --

7 A. It certainly came from land application of animal waste.  
8 It came from land application of commercial fertilizer where  
9 our farmers used typical triple 13 , triple 19, triple 17 even  
10 though they didn't need phosphorus.

11 Q. But when you talk about animal waste in the IRW, that  
12 would be poultry waste?

13 A. As far as what's being land applied by farmers, yes.

14 Q. These areas of the Illinois in Arkansas are not naturally  
15 fertile areas?

16 A. No.

17 Q. They're actually known for their thin, rocky soil?

18 A. Sure.

19 Q. And as an agricultural engineer, do you recognize that  
20 there's a limited filtering in such soils?

21 A. Sure, that's why I worked to get our state nutrient  
22 management program in place.

23 MR. BULLOCK: Let's go to -- let me approach, if I  
24 might.

25 THE COURT: You may, sir.

1 Q. Now, where did that nutrient surplus come from?

2 A. You mean where did the definition come from?

3 Q. No, where did the surplus nutrients in those watersheds  
4 come from?

5 A. Well, it came from a number of sources, I suspect.

6 Q. Including, as you said in the CREP application, that --

7 A. It certainly came from land application of animal waste.  
8 It came from land application of commercial fertilizer where  
9 our farmers used typical triple 13 , triple 19, triple 17 even  
10 though they didn't need phosphorus.

11 Q. But when you talk about animal waste in the IRW, that  
12 would be poultry waste?

13 A. As far as what's being land applied by farmers, yes.

14 Q. These areas of the Illinois in Arkansas are not naturally  
15 fertile areas?

16 A. No.

17 Q. They're actually known for their thin, rocky soil?

18 A. Sure.

19 Q. And as an agricultural engineer, do you recognize that  
20 there's a limited filtering in such soils?

21 A. Sure, that's why I worked to get our state nutrient  
22 management program in place.

23 MR. BULLOCK: Let's go to -- let me approach, if I  
24 might.

25 THE COURT: You may, sir.

1 perception. The objection is sustained.

2 MR. BULLOCK: If I could approach.

3 THE COURT: You may, sir.

4 Q. (By Mr. Bullock) Okay. I've handed you what's been  
5 marked as Plaintiffs' Exhibit 516. Do you recognize that?

6 A. I'm somewhat familiar with it. I don't recall ever having  
7 seen this report.

8 Q. What do you mean you're familiar with it?

9 A. I know we have -- I don't know if we actually helped fund  
10 this work or not.

11 Q. Okay. Well, let's go to page -- the top of page 1 on that  
12 which is actually the second page. Let me ask you if you agree  
13 with this.

14 MR. GEORGE: Your Honor, before Mr. Bullock reads, I  
15 apologize, there's not been a foundation laid that the witness  
16 has seen it.

17 MR. BULLOCK: Well, I'm going to ask him whether he  
18 agrees with this statement.

19 MR. GEORGE: I believe as a matter of procedure before  
20 he reads a statement out of a document, we ought to establish  
21 whether the witness has a foundation to testify about it.

22 THE COURT: Sustained.

23 Q. (By Mr. Bullock) You recognize that the counties in  
24 northwest Arkansas which are concerned here have what's known  
25 as karst geology?

1 A. Yes.

2 Q. What is the importance of that piece of information?

3 A. Essentially a lot of what is applied to the surface of the  
4 land can more easily find its way into the groundwater in karst  
5 topography.

6 Q. Okay. And do you agree with the next -- I'm about to mess  
7 up here. Let me go back. Let me ask you whether it's not true  
8 that excessive application of poultry litter over a long period  
9 of time has caused a buildup in nutrients in the IRW?

10 MR. GEORGE: Objection, Your Honor, relevancy, buildup  
11 of nutrients, I'm not sure this is a nutrient motion.

12 THE COURT: I think he's testified as to this.  
13 Overruled.

14 A. I'm sure it's contributed, yes.

15 Q. (By Mr. Bullock) Okay. Now, is it also true that rapidly  
16 growing population in northwest Arkansas has reduced the area  
17 available for spreading litter?

18 A. Sure, it's reduced it. I don't know to what extent but,  
19 yes.

20 Q. Let's talk about your litter regulations that you've  
21 testified to. First of all, is it not true that those are  
22 exclusively to address nutrients applied to the land?

23 A. That's true.

24 Q. Okay. And they do not address the issue of pathogens  
25 which can be applied to the land and allowed to run off?